

REPUBLIC OF SOUTH AFRICA

BIRTHS AND DEATHS REGISTRATION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 33356 of 5 July 2010)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 18—2010]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Births and Deaths Registration Act, 1992, so as to substitute, insert and delete certain definitions; to revise provisions relating to the registration of births; to revise provisions relating to amendments of birth registration; to provide for the designation of funeral undertakers; to make provision for the recording of adoptions; to revise the provisions relating to secrecy of records obtained under this Act; to clarify provisions relating to the making of regulations; to repeal certain sections; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 51 of 1992, as amended by section 3 of Act 41 of 1995, section 1 of Act 40 of 1996 and section 1 of Act 1 of 2002

1. Section 1 of the Births and Deaths Registration Act, 1992 (hereinafter referred to as the principal Act), is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“[(1)] In this Act, unless the context otherwise indicates—

‘biometrics’ means photographs, fingerprints (including palmprints), hand measurements, signature verification, facial patterns or retinal patterns that may be used to verify the identity of individuals;

[(i)] **‘birth’**, in relation to a child, means the birth of a child born alive; [(vii)]

[(ii)] **‘burial’** means burial in earth or the cremation or any other mode of disposal of a corpse; [(ii)]

[(iii)] **‘burial place’** means any public, private or other place which is used for a burial; [(i)]

‘child born out of wedlock’ does not include a child whose parents were married to each other at the time of his or her conception or at any time thereafter before the completion of his or her birth;

‘Children’s Act’ means the Children’s Act, 2005 (Act No. 38 of 2005);

‘competent court’ [includes] means a magistrates’ court, and a children’s court established [as contemplated] in terms of the [Child Care Act, 1983 (Act No. 74 of 1983)] Children’s Act;

[(iv)] **‘corpse’** means any dead human body, including the body of any still-born child; [(ix)]

[(v)] **‘Department’** means the Department of Home Affairs; [(iv)]

[(vi)] **‘Director-General’** means the Director-General: Home Affairs; [(v)]

- (vii) **‘fingerprints’ includes palmprints; (xvii)**
- (viii) **‘forename’** means the word or words by which a person is designated as an individual and which precede his surname; [(xix)]
- (ix) **‘major’ [or “person of age”]** means any person who [has attained the age of] is 18 years or older [or who has under the provisions of section 2 of the Age of Majority Act, 1972 (Act No. 57 of 1972), been declared to be a major, and includes a person under the age of 18 years, who has contracted a legal marriage], and **‘person of age’** has a similar meaning; [(x)]
- ‘marriage’ means—**
- (a) a marriage concluded in terms of—
- (i) the Marriage Act, 1961 (Act No. 25 of 1961); or
- (ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);
- (b) a civil union concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006); or
- (c) a marriage concluded in terms of the laws of a foreign country;
- ‘medical practitioner’ includes a suitably qualified person who, on the recommendation of the Director-General: Health by virtue of such person’s medical knowledge and experience, is appointed by the Director-General;**
- (x) **‘Minister’** means the Minister of Home Affairs; [(xii)]
- (xi) **‘minor’ or ‘minor person’** means any person who is not a major or a person of age; [(xi)]
- (xii) **‘police officer’ means a member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958); (xiii)**
- (xiii) **‘population register’** means the population register [mentioned] contemplated in section 5 of the Identification Act, [1986 (Act No. 72 of 1986)] 1997 (Act No. 68 of 1997); [(iii)]
- (xiv) **‘prescribed’** means prescribed [under this Act or any] by regulation; [(xviii)]
- (xv) **‘regional representative’ means any person designated as a regional representative under section 21(1)(a) of the Identification Act, 1986 (Act No. 72 of 1986); (xvi)**
- (xvi) **‘registration’**, in relation to a birth or a death, means the registration thereof mentioned in section 5; [(xiv)]
- (xvii) **‘regulation’ means a regulation made and in force under this Act; (xv)**
- (xviii) **‘still-born’**, in relation to a child, means that it has had at least 26 weeks of intra-uterine existence but showed no sign of life after complete birth, and **“still-birth”**, in relation to a child, has a corresponding meaning; [(vi)]
- (xix) **‘this Act’** includes the regulations. [(viii)]”; and
- (b) the deletion of subsection (2).

Amendment of section 7 of Act 51 of 1992, as amended by section 1 of Act 67 of 1997

2. Section 7 of the principal Act is hereby amended by—

- (a) the substitution for subsection (2) of the following subsection:
- “(2) If in the course of the administration of this Act it comes to the attention of the Director-General that any particulars in respect of any person in any document submitted or preserved in terms of this Act or included in the population register are not correctly reflected, the Director-General may supplement and **[correct] rectify** such particulars in consultation with the person in question.”; and
- (b) the substitution for subsection (3) of the following subsection:
- “(3) Any person who is in possession of a certificate or other document purported to be issued in terms of this Act, which does not correctly reflect the particulars in any document referred to in subsection (2) or in the population register, shall within the prescribed period hand over or send by registered post such certificate or document to the Director-General for rectification.”; and

- (c) the addition of the following subsection after subsection (3):

“(4) Any person may apply, in the prescribed manner, to the Director-General to request the amendment or rectification of his or her particulars furnished in terms of this Act.”.

Substitution of section 8 of Act 51 of 1992

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3. The following section is hereby substituted for section 8 of the principal Act:

“Fees payable

8. The Director-General may with the concurrence of the Minister of [State Expenditure] Finance determine the fees payable for any specified act performed in accordance with the provisions of this Act by the Director-General or any person contemplated in section 4, and shall publish such fees in the *Gazette*.”.

Amendment of section 9 of Act 51 of 1992, as amended by section 4 of Act 41 of 1995, section 1 of Act 43 of 1998 and section 2 of Act 1 of 2002

4. Section 9 of the principal Act is hereby amended by— 15

- (a) the substitution for subsection (1) of the following subsection:

“(1) In the case of any child born alive, any one of his or her parents [or, if neither of his or her parents is able to do so, the person having charge of the child or a person requested to do so by the parents or the said person], or if the parents are deceased, any of the prescribed persons, shall, within 30 days after the birth of such child, give notice thereof in the prescribed manner, and in compliance with the prescribed requirements, to any person contemplated in section 4.”;

- (b) the insertion after subsection (1) of the following subsection:

“(1A) The Director-General may require that biometrics of the person whose notice of birth is given, and that of his or her parents, be taken in the prescribed manner.”;

- (c) the deletion of subsection (3);

- (d) the substitution for subsection (3A) of the following subsection:

“(3A) Where the notice of a birth is given after the expiration of [one year] 30 days from the date of birth, the birth shall not be registered, unless the notice of the birth complies with the prescribed requirements for a late registration of birth.”; and

- (e) the addition of the following subsections after subsection (6):

“(7) The Director-General may on application in the prescribed manner issue a prescribed birth certificate from the population register.

(8) An original birth certificate issued in terms of subsection (7) shall in all courts of law be on the face of it evidence of the particulars set forth therein.”.

Amendment of section 11 of Act 51 of 1992, as amended by section 3 of Act 40 of 1996 and section 8 of Act 56 of 1998

5. Section 11 of the principal Act is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:

“(1) Any parent [or guardian] of a child born out of wedlock whose parents married each other after the registration of his or her birth, may, if such child is a minor, or such child himself or herself may, if he or she is of age, apply in the prescribed manner to the Director-General to amend the registration of his or her birth as if his or her parents were married to each other at the time of his or her birth, and thereupon the Director-General shall, if satisfied that the applicant is competent to make the application, that the alleged parents of the child are in fact his or her parents and that they legally married each other, amend the registration of birth in the prescribed manner as if such child’s parents were legally married to each other at the time of his or her birth.”;

- (b) the deletion of subsection (3);

- (c) the insertion after subsection (4) of the following subsection:

“(4A) An amendment of the particulars of a person who has acknowledged himself as a father of a child as contemplated in subsection (4) and section 10(1)(b) of the Act shall be supported by the prescribed conclusive proof of that person being the father of the child.”; 5
and

- (d) the substitution for subsection (6) of the following subsection:

“(6) When the court considers the application contemplated in subsection (5) the provisions of **[sections 1 and 2 of the Children’s Status Act, 1987 (Act No. 82 of 1987),]** section 26(b) of the Children’s Act shall apply.”. 10

Substitution of section 12 of Act 51 of 1992

6. The following section is hereby substituted for section 12 of the principal Act:

“Notice of birth of abandoned or orphaned child”

12. (1) The notice of birth of an abandoned child which has not yet been given, shall be given, after an enquiry in respect of the child concerned in terms of the **[Child Care Act, 1983 (Act No. 74 of 1983)] Children’s Act**, by the social worker **[or authorized officer]** concerned: Provided that in the event of any parent of the child being traced after the registration of the birth and the particulars in any document or record in respect of the child not being reflected correctly, the Director-General may on application, in the prescribed manner, amplify and correct the said particulars. 15 20

(2) The notice of birth of an orphaned child which does not list any of the persons contemplated in terms of section 9(1), shall be given by a social worker, after conclusion of an enquiry in respect of such child concerned in terms of the Children’s Act.”. 25

Amendment of section 19 of Act 51 of 1992

7. Section 19 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) For the purposes of this section **“port of entry”** has the meaning assigned thereto by section 1 of the **[Aliens Control Act, 1991 (Act No. 96 of 1991)] Immigration Act, 2002 (Act No. 13 of 2002).**”. 30

Insertion of section 22A in Act 51 of 1992

8. The following section is hereby inserted in the principal Act after section 22:

“Designation of funeral undertakers” 35

22A. (1) In order to be designated as a funeral undertaker for the purposes of engaging in the activities relating to the registration of deaths in terms of this Act, any person who conducts a business of a funeral parlour may apply, in the prescribed manner and in compliance with the prescribed requirements, to the Director-General, who may approve an application and allocate a designation number to any such person so designated. 40

(2) The Director-General shall maintain a register of persons whose applications he or she approved and designated as funeral undertakers in terms of subsection (1).

(3) The Director-General may remove any person from the said register for failure to comply with prescribed requirements, after having afforded such a person an opportunity to be heard. 45

(4) Any administrative action taken in terms of this section is subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 50

(5) No person other than the persons contemplated in subsection (2) shall engage in the activities relating to the registration of deaths in terms of this Act.”. 55

Substitution of section 23 of Act 51 of 1992

9. The following section is hereby substituted for section 23 of the principal Act:

“Amplification of birth registrations

23. If the birth of any person was registered before the commencement of this Act without the assignment to him or her of any forename or surname, any parent **[or his guardian if he is]** of a minor, or **[he himself if he is]** a person of age, may apply to the Director-General for the amplification of the registration of his or her birth by the entry of his or her forename or surname **[in connection therewith]**, and the Director-General shall thereupon, if satisfied that the applicant is competent to make the application, so amplify the birth register in respect of such person.”.

Amendment of section 24 of Act 51 of 1992

10. Section 24 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) Any parent of a minor, or **[he himself if he is]** a person of age, may apply in the prescribed manner to the Director-General for the alteration of his or her forename under which his or her birth is registered, and the Director-General may alter such forename accordingly in the prescribed manner.”; and

(b) the deletion of subsection (2).

Amendment of section 25 of Act 51 of 1992, as amended by section 2 of Act 67 of 1997, section 11 of Act 86 of 1997 and section 3 of Act 1 of 2002

11. Section 25 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any parent **[or any guardian]** of a minor whose birth has been included under a specific surname in the population register, may on the strength of a reason not mentioned in subsection (1), apply in the prescribed manner to the Director-General for the alteration of the surname of the minor under which his or her birth was registered, and the Director-General may, on submission of a good and sufficient reason given for the contemplated alteration of the surname, alter the said original surname accordingly in the prescribed manner.”.

Amendment of section 26 of Act 51 of 1992, as amended by section 3 of Act 67 of 1997 and section 4 of Act 1 of 2002

12. Section 26 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) At the request of any person, in the prescribed manner, the Director-General may, if he or she is satisfied that there is a good and sufficient reason as may be prescribed for that person’s assumption of another surname, authorize the person to assume a surname other than his or her surname as included in the population register, and the Director-General shall include the substitutive surname in the population register in the prescribed manner.”.

Amendment of section 27A of Act 51 of 1992, as amended by section 4 of Act 49 of 2003

13. Section 27A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the Director-General grants an application, made in the prescribed manner, or a magistrate issues an order in terms of section 2 of the Alteration of Sex Description and Sex Status Act, 2003 (Act No. 49 of 2003), the Director-General shall alter the sex description on the birth register of the person concerned.”.

Insertion of section 27B in Act 51 of 1992

14. The following section is hereby inserted in the principal Act after section 27A:

“Recording of adoption in birth register

27B. (1) The recording of adoption in a birth register contemplated in section 245(1) of the Children’s Act shall be made upon application, in the prescribed manner, accompanied by the supporting documents mentioned in section 245(2) of the Children’s Act, and any other prescribed requirements in terms of this Act. 5

(2) The Director-General shall, subject to the provisions of this Act, record in the prescribed manner the adoption and any change of surname of the adopted child in the birth register in accordance with the adoption order.”. 10

Amendment of section 28 of Act 51 of 1992

15. Section 28 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) The Director-General may [on], upon application in the prescribed manner and in compliance with the prescribed requirements, issue a certificate from the population register in [such] the prescribed form [as he may deem fit].”.

Amendment of section 29 of Act 51 of 1992

16. Section 29 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph: 20

“(b) any person who has applied, in the prescribed manner, with a full exposition of the purposes for which the information is required and who has paid the prescribed fees, if any: Provided the Director-General is satisfied that the furnishing of that information— 25

- (i) will not amount to an unreasonable disclosure of that person’s personal information as contemplated in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- (ii) is for the protection of the rights, and in the interest, of the person whose particulars are being requested; or 30
- (iii) is in the public interest.”.

Repeal of section 30 of Act 51 of 1992

17. Section 30 of the principal Act is hereby repealed.

Amendment of section 31 of Act 51 of 1992, as amended by section 4 of Act 67 of 1997 35

18. Section 31 of the principal Act is hereby amended by the substitution in subsection (1) for the words following paragraph (g) of the following words:

“shall be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding [five] 15 years or to both such fine and such imprisonment.”. 40

Substitution of section 32 of Act 51 of 1992

19. The following section is hereby substituted for section 32 of the principal Act:

“Regulations

32. The Minister may make regulations relating to—

- (a) the forms which may be used for the purposes of making applications for processes of the Act; 45
- (b) the requirements and conditions for making applications in terms of this Act;

- (c) the certificates which may be issued under this Act and the requirements for the issuing of certificates;
- (d) any matter that may be prescribed under this Act; and
- (e) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation and administration of this Act.”. 5

Substitution of words

20. The principal Act is hereby amended by the substitution for the words “he”, “him” and “his”, wherever they occur, of the words “he or she”, “him or her” and “his or her”, respectively. 10

Short title and commencement

21. This Act is called the Births and Deaths Registration Amendment Act, 2010, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE BIRTHS AND DEATHS REGISTRATION AMENDMENT BILL, 2010

1. OBJECTS OF THE BILL

- 1.1 The main objective of the Births and Deaths Registration Amendment Bill, 2010 ("the Bill"), is to amend the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992) ("the Act"), so as to substitute, insert and delete certain definitions, revise provisions relating to registration of births and amendment of birth registration, provide for the designation of funeral undertakers, make provision for the recording of adoptions, revise provisions relating to secrecy of records obtained under the Act, clarify provisions relating to the making of regulations, repeal certain sections and provide for matters connected therewith.
- 1.2 Furthermore, the Bill seeks to provide that the person giving notice of birth of a child must be one of the parents of the child or any of the persons to be prescribed. The Bill further revises provisions relating to late registration of birth and, in addition to giving notice of birth of an abandoned child, also provides for the procedure for giving notice of birth of an orphaned child.
- 1.3 To align the provisions of the Act with the provisions of the Children's Act, 2005 (Act No. 38 of 2005) ("the Children's Act"), in that it provides for the recording of adoption and any change of surname of the adopted child in the birth register in accordance with the adoption order. Furthermore, the Bill seeks to align the provisions of the Act with the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), with regard to access to records obtained under the Act.
- 1.4 To provide for the designation of funeral undertakers for purposes of activities relating to the registration of deaths.
- 1.5 To clarify provisions relating to the making of regulations, as well as the procedures for making applications for certain processes contemplated in the Act.
- 1.6 To revise penal provisions, repeal obsolete provisions and substitute references to repealed legislation.

2. INSTITUTIONS CONSULTED

None.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. PARLIAMENTARY PROCEDURE

- 4.1 The State Law Advisers and the Department of Home Affairs are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in sections 74 or 76 of the Constitution applies.
- 4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.